

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY HARRISON,

Defendant-Appellant.

UNPUBLISHED

July 24, 2003

No. 237488

Wayne Circuit Court

LC No. 00-010214

Before: Meter, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for two counts of first-degree murder, MCL 750.316(1)(a), two counts of armed robbery, MCL 750.529, and one count of possession of a firearm during the commission of a felony, MCL 750.227b.¹ Defendant was sentenced to two terms of life imprisonment without parole for his first-degree murder convictions to be served concurrently with two terms of twenty-five to fifty years' imprisonment for his armed robbery convictions and consecutively to a term of two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant's convictions arise from the shooting deaths of Manfred Moser and Phyllis Gossett in a robbery at MRM Products ("MRM") in Detroit. Defendant once was a contract employee of MRM, which Moser owned and for which Gossett was employed as secretary. The evidence at trial indicated that defendant accompanied codefendants Dajuan Jackson and Martin Armstead² to MRM to steal pre-signed checks. Jackson remained outside the office as a lookout while defendant and Armstead entered the premises. Defendant shot and killed Moser and Gossett and stole a binder containing pre-signed checks.

Defendant argues that his due process right to a fair trial and to his right to reasonably assist his defense counsel were violated because the trial court allowed the trial to proceed when

¹ Defendant was also convicted of two counts of felony murder, MCL 750.316(1)(b). However, the sentences for the felony murder convictions were vacated at the time of sentencing, and they are not at issue in this appeal.

² Codefendants Jackson and Armstead were not part of defendant's trial, and are not part of this appeal.

defendant was without his prescription eyeglasses and he could not clearly see the witnesses. We disagree.

We must first determine the standard of review. Defendant asserts that the fact that the trial court allowed the jury trial to proceed when defendant was without his eyeglasses was a structural error that was not harmless beyond a reasonable doubt. The prosecutor contends that defendant waived the issue by failing to request the trial court for a continuance to await delivery of eyeglasses. To preserve an issue for appellate review, a party must object below. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000). Objections are required in order to give the lower court the opportunity to rectify the error. *People v Grant*, 445 Mich 535, 551; 520 NW2d 123 (1994).

Prior to the jury selection, defense counsel stated that defendant did not have his prescription eyeglasses and argued that “it seems unfair to make [defendant] pick a jury when he can’t see them.” On this basis alone, the trial court accepted that defendant “can’t see 10 feet to the jury box.” Defense counsel requested the court to instruct the jail officials to locate defendant’s glasses. The court so ordered and the jail officials reported later that day that their records did not indicate defendant ever having glasses in his possession. Defense counsel then asked the court to order the jail officials to have defendant’s eyes examined so that defendant’s father can purchase a pair of prescription eyeglasses for defendant. The court granted this order and the trial began. Defense counsel did not object to the trial proceeding nor did he ask for a continuance until defendant obtained new eyeglasses. Defendant challenges the fact that the trial proceeded when he was without eyeglasses. This challenge is different from the objection raised below, which pertained to the selection of the jury. Therefore, the court was never given an opportunity to rectify the alleged error. Accordingly, we review defendant’s claim for plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Under the plain error rule, two requirements must be satisfied: (1) plain error must have occurred, and (2) the plain error must have affected a substantial right. *Carines, supra* at 763. In order for plain error to have occurred, the trial court must have made an error that is “clear and obvious.” *Id.* Following oral argument in this case, we sua sponte remanded the matter to the trial court for a hearing to determine the extent of defendant’s uncorrected vision and the extent to which defendant was able to see without his glasses. At the hearing on remand, the parties stipulated that defendant’s visual acuity was 20/400, and that defendant would perceive objects ten feet away as “blurry” without eyeglasses. Defendant testified that his view of the witnesses and the jurors at trial was “a blur.” A review of the record indicates that defendant’s argument is essentially a claim that he has a due process right to see clearly, or to see perfectly, at trial.

Defendant provides no authority to show a due process right to see clearly at trial. At its most basic level, due process entails the right for a defendant “to examine the witnesses against him, to offer testimony and to be represented by counsel.” *In re Oliver*, 333 US 257, 273; 68 S Ct 499; 92 L Ed 682 (1948). “The law does not require that a defendant receive a perfect trial, only a fair one.” *Grant, supra* (quotation omitted). The lower court record indicates that defendant was present in the courtroom at all critical stages of the trial, was able to offer testimony on his own behalf and was represented by counsel. Defendant has offered no evidence showing how the lack of eyeglasses prevented his hearing and understanding of the testimony offered against him or prevented his understanding of the proceedings. Defendant also claims

that, because the witnesses who testified against him at trial were friends and family privy to the fact that defendant had poor eyesight, the witnesses' motivation to tell the truth was affected. Defendant offers no evidence in support of this contention. Rather, the record shows that defendant was provided every opportunity at trial to cross-examine these witnesses and impeach their credibility. From the above, defendant's argument is without merit.

Defendant next argues on appeal that he is entitled to a new trial because trial counsel was ineffective and that the trial court erred by not appointing new defense counsel. We disagree. Defendant failed to move for a new trial or a *Ginther*³ hearing. Therefore, our review is limited to the record. *People v Watkins*, 247 Mich App 14, 30; 634 NW2d 370 (2001).

To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that, but for defense counsel's errors, there was a reasonable probability that the result would have been different. *People v Pickens*, 446 Mich 298, 314; 521 NW2d 797 (1994). Defendant must also overcome the strong presumption that the challenged action is sound trial strategy. *Id.* at 330. Defendant bears the burden of showing that counsel's alleged errors were so serious as to deprive him of a fair trial. *People v LeBlanc*, 465 Mich 575, 578; 640 NW2d 246 (2002).

Defendant argues that his trial counsel was ineffective because counsel refused to consider some of defendant's proposed issues, declined to ask witnesses a number of questions that defendant had submitted to counsel, and refused to make certain objections. From our review of the record, we conclude that defendant fails to show that defense counsel's actions fell below an objective standard of reasonableness. Defendant does not show how he was prejudiced. Thus, defendant's claim is without merit.

Defendant next argues that the trial court erred by declining to substitute his trial counsel. We disagree. The decision regarding attorney substitution is within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001). As this Court has explained:

An indigent defendant is guaranteed the right to counsel; however, he is not entitled to have the attorney of his choice appointed simply by requesting that the attorney originally appointed be replaced. Appointment of a substitute counsel is warranted only upon a showing of good cause and where substitution will not unreasonably disrupt the judicial process. Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental trial tactic. [*Traylor, supra* (citations omitted).]

Further, a mere allegation that a defendant lacks confidence in his attorney is not good cause to substitute counsel. *Traylor, supra* at 463.

At final conference before trial, defendant informed the trial court that he and defense counsel were "not on the same page." Defendant explained that he did not feel comfortable with his counsel, that there was "no line of communication" with counsel, and that he and counsel did

³ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

not see “eye to eye.” Nonetheless, defendant expressly stated that he believed “in his heart” that his counsel could defend him. Defense counsel, on the other hand, informed the trial court that defendant’s evaluation of the legal issues differed from that of defense counsel and that he “tried to tell [defendant] that things can’t be done the way [defendant] wants them to be done” but that counsel still welcomed input from defendant. Counsel further assured the trial court that he was a seasoned attorney with more than thirty years’ experience and that he would represent defendant to the best of his ability. The court determined that counsel should remain on the case.

In light of the above, the trial court did not abuse its discretion in declining defendant’s request for counsel substitution. Defendant’s dissatisfaction with counsel is not sufficient grounds for substitution of counsel.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Michael J. Talbot